

**Letter of Findings: 01-20170531
Individual Income Tax
For Tax Year 2010**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual did not provide sufficient documentation to support protest of individual income tax assessment involving an erroneously issued refund.

ISSUE

I. Individual Income Tax - Erroneous Refund.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-2; IC § 6-3-4-6; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007)

Taxpayer protests the Department's assessment of individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual residing in Indiana. The Indiana Department of Revenue ("Department") issued a proposed assessment to Taxpayer for additional tax due for tax year 2010. The Department determined that Taxpayer had erroneously received a refund of individual income tax for tax year 2010 based on modifications made by the Internal Revenue Service ("IRS") to Taxpayer's federal adjusted gross income ("AGI"). The IRS determined that Taxpayer's AGI for 2010 was \$0, and the Department adjusted Taxpayer's state tax return accordingly. As a result, the Department determined that Taxpayer was not entitled to the refund that had previously been issued for tax year 2010.

Taxpayer protested the assessment of additional income tax, asserting that she was a victim of fraud and that she did not file any returns for tax year 2010 due to her incarceration. An administrative hearing was scheduled but Taxpayer did not attend. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Erroneous Refund.

DISCUSSION

Taxpayer protests the assessment of additional tax due for tax year 2010 based on the Department's determination that Taxpayer erroneously received a refund. Taxpayer alleges that she was a victim of fraud and someone other than herself filed an income tax return under her name. Taxpayer stated that she was incarcerated from 2009 to 2015 and was therefore unable to file an income tax return for tax year 2010. Taxpayer asserts that she did not receive the refund at issue.

As an initial matter, the Department notes that all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Sq. Amoco, Inc. v. Ind. Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Ind. Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong.

The Department issued the proposed assessment under the authority of IC § 6-8.1-5-2, which states, in relevant part:

(g) If any part of a listed tax has been erroneously refunded by the department, the erroneous refund may be recovered through the assessment procedures established in this chapter. An assessment issued for an erroneous refund must be issued:

- (1) within two (2) years after making the refund; or
- (2) within five (5) years after making the refund if the refund was induced by fraud or misrepresentation.

...

(i) If a taxpayer's federal taxable income, federal adjusted gross income, or federal income tax liability for a taxable year is modified due to a modification as provided under [IC 6-3-4-6\(c\)](#) and [IC 6-3-4-6\(d\)](#) (for the adjusted gross income tax) . . . then the date by which the department must issue a proposed assessment under section 1 of this chapter for tax imposed under [IC 6-3](#) is extended to six (6) months after the date on which the notice of modification is filed with the department by the taxpayer.

Also relevant is IC § 6-3-4-6, which states:

(b) Each taxpayer shall notify the department of any modification as provided in subsection (c) of:

- (1) a federal income tax return filed by the taxpayer after January 1, 1978; or
- (2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.

The taxpayer shall file the notice on the form prescribed by the department within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.

Following the IRS's modification of Taxpayer's 2010 federal AGI, Taxpayer had an obligation to file a notice with the Department within 180 days of the modification. However, Taxpayer did not file a notice with the Department; therefore, the six month statute of limitations under IC § 6-8.1-5-2(i) did not begin to run and the Department had an unlimited time in which to utilize the modifications received from the IRS to issue an assessment for the erroneous refund.

In her protest submission, Taxpayer requested audit review prior to proceeding to protest as a track to resolve her protest. However, because there was no audit involved in this assessment, audit review was not the proper course for resolution of Taxpayer's protest. Taxpayer's protest was scheduled for a hearing in order to provide Taxpayer with the opportunity to submit additional information to the Department in support of her protest, but she did not attend the scheduled hearing nor did she contact the Department to reschedule the hearing. Taxpayer stated that she filed an identity theft affidavit with the IRS; however, she did not provide a copy of the affidavit in her communications with the Department. Taxpayer has not supported her protest as required by IC § 6-8.1-5-1(c) and therefore the Department lacks enough information to determine that the proposed assessment was wrong.

FINDING

Taxpayer's protest is respectfully denied due to lack of documentation. Taxpayer may request a rehearing within thirty days of the date of this decision in order to present evidence to support her protest.

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